Supreme Court, U.S.
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No. 99-1964

In the Supreme Court of the United States

TIMOTHY BOOTH,
Petitioner

v.

C.O. CHURNER, SERGEANT WORKENSHER, LIEUTENANT RIKUS AND CAPTAIN GARDNER,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), a prisoner must exhaust administrative remedies where the administrative process does not provide for money damages, and the prisoner is seeking both monetary and non-monetary relief?

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 206 F.3d 289 and is reprinted in the appendix to the petition ("Pet. App.") at 1a. The opinion of the District Court is not reported but is reprinted at Pet. App. 36a.

STATEMENT OF THE CASE

This is a civil rights action by a state prisoner against four Pennsylvania prison officials. The petitioner is Timothy Booth, who at the time of the events he complains of was imprisoned at the State Correctional Institution at Smithfield, Pennsylvania. Pet. App. 36a. The respondents are Correctional Officer Churner, Sergeant Workensher, Lieutenant Rikus, and Captain W. Gardner, all of whom were employed at the same prison.[1] Pet. App. 4a.

1. Booth complains of four separate incidents. First, he claims that in April of 1996, he was assaulted by two prison officials (neither of whom he named as a defendant in this action); as a result, he has "a shoulder that slips in and out," for which he was denied an operation. Second, he claims that on February 6, 1997, a prison official — who again is not named as a defendant — threw cleaning material in his face. Third, he claims that on February 7, 1997, he was shoved into a storage shelf by respondent Rikus, and mistreated by other officers. Finally, he claims that on March 23, 1997, respondent Churner

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[1]In the District Court, Booth also named the Superintendent of the Smithfield correctional institution as a defendant. Pet. App. 37a. The Superintendent, however, is not named as a respondent in this Court.

punched him in the mouth in the presence of respondent Workensher. Pet. App. 4a-5a.

2. Booth, proceeding pro se, filed his complaint in the Middle District of Pennsylvania in April of 1997, seeking relief pursuant to 42 U.S.C. § 1983. Initially, he sought only an order transferring him to another prison, Pet. App. 4a, 38a, but in subsequent filings he expanded on the relief he sought, requesting orders "to stop the continuous beatings," to obtain an operation, to improve the prison law library, to fine prison officials for contempt of court, to obtain paralegal assistance, and to disclose prison records. Pet. App. 5a. He also amended his complaint to seek compensatory and punitive damages. Pet. App. 5a, 21a-22a n.10.

The District Court dismissed Booth's complaint without requiring a response from the defendants. *See* 42 U.S.C. § 1997e(c). The District Court noted that 42 U.S.C. § 1997e(a) provides that:

> No action shall be brought with respect to prison conditions under ... any ... Federal law, by a prisoner ... until such administrative remedies as are available are exhausted.

Pet. App. 36a-37a. The District Court further noted that Pennsylvania's state prison system provides for prisoners to submit written grievances for resolution, and provides for several levels of review and appeal, Pet. App. 38a; and that, while Booth had submitted a grievance about his claims of abuse, he had not appealed the dismissal of that grievance. Pet. App. 38a. The District Court therefore concluded that Booth had not exhausted the administrative remedies available to him, and dismissed his complaint without prejudice. Pet. App. 38a-39a. Booth appealed.

3. In the Court of Appeals, Booth conceded that he had not exhausted his administrative remedies, Pet. App. 20a, but argued that, because those remedies could not provide him with the money damages he sought, exhaustion would be futile and therefore not required.[2] Pet. App. 21a. The Court of Appeals, relying on its recent decision in *Nyhuis v. Reno*, 204 F.3d 65 (3d Cir. 2000), rejected this argument. Pet. App. 22a-23a. In *Nyhuis*, the Court of Appeals had held that Section 1997e(a) "make[s] exhaustion of all administrative remedies necessary — whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action." 204 F.3d at 67, *quoted at* Pet. App. 22a. *Nyhuis* was a *Bivens* action against federal officials, but the Court of Appeals held that its rationale applied equally — indeed, with even greater force — to Section 1983 actions against state officials. Pet. App. 22a-23a. Accordingly, the Court of Appeals affirmed the order of the District Court.

REASONS FOR DENYING THE WRIT

I. The issue presented by the petition was neither presented to nor decided by the courts below.

The petitioner claims that the issue in this case is whether Section 1997e(a) requires exhaustion of administrative remedies where a prisoner is seeking "*only* monetary damages," and money damages are not available through the administrative process. Pet. i (emphasis added). According to petitioner, the

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[2]Booth also argued that his action was not one "with respect to prison conditions" within the meaning of Section 1997e(a). The majority of the Court of Appeals panel rejected this argument, Pet. App. 8a-19a, *cf.* Pet. App. 24a-28a (Noonan, J., concurring and dissenting), and Booth does not pursue it in this Court. Pet. 6 n.3.

Courts of Appeals are in "clear," "absolute," "direct" and "irreconcilable" conflict on this issue. Pet. 1, 7.

However that may be, that is not the issue presented to, and decided by, the courts below in this case. Petitioner did not file an action seeking "only monetary damages"; as we discussed above, he filed an action seeking both money damages and a variety of non-monetary relief. *See supra* at 2. Petitioner suggests in a footnote that, because he was transferred to another prison, "his claims for injunctive relief became moot." Pet. 5 n.2. This, however, ignores the fact that petitioner requested not only that he be moved to another prison, but other relief as well — such as an operation on his injured shoulder — which would not be mooted by a transfer. It ignores likewise the fact that neither of the courts below treated his injunctive claims as moot, but instead decided this case on the assumption that petitioner had live claims for both monetary and non-monetary relief.

As we now discuss, the Courts of Appeals which have addressed this issue are in substantial, although not complete, agreement on the proper treatment of such "mixed" claims. With one exception, those courts agree that prisoners who present claims for both monetary and non-monetary relief are required by Section 1997e(a) to exhaust administrative remedies even if money damages are not available through the administrative process. To the extent that conflict on this issue exists at all, it is both extremely recent and limited in scope; and it would be premature for the Court to step in now.

II. The Courts of Appeals are in substantial agreement that prisoners who present "mixed" claims for monetary and non-monetary relief must first exhaust their administrative remedies.

Petitioner argues at length that the Courts of Appeals are deeply divided over whether a prisoner must exhaust administrative remedies when those remedies do not provide for the recovery of money damages, *and money damages are the only relief the prisoner seeks.* Pet. 7-13. That is not the case, however, where, as here, the prisoner seeks both monetary and non-monetary relief; in such "mixed" cases, most of the Courts of Appeals agree that exhaustion is required.

The Third, Sixth, Seventh and Eleventh Circuits require exhaustion in all cases, even where a prisoner seeks only money damages. *See Nyhuis v. Reno*, 204 F.3d at 71; *Freeman v. Francis*, 196 F.3d 641, 643 (6th Cir. 1999); *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 537 (7th Cir. 1999); *Alexander v. Hawk*, 159 F.3d 1321, 1327 (11th Cir. 1998). The Fifth Circuit does not require exhaustion in such cases, but does require it in "mixed" cases. *Whitley v. Hunt*, 158 F.3d 882, 887 (5th Cir. 1998). The Ninth Circuit likewise does not require exhaustion where only money damages is sought, but has "impliedly rejected" this rule for "mixed" cases. *Nyhuis v. Reno*, 204 F.3d at 71 & n.7, *citing Rumbles v. Hill*, 182 F.3d 1064, 1069 (9th Cir. 1999) *and Lunsford v. Jumao-As*, 155 F.3d 1178, 1179 (9th Cir. 1998).

Only within the last few weeks has any Court of Appeals adopted a different rule, and then only in part. The Tenth Circuit recently held that, in "mixed" cases where money damages are not available through the administrative process, administrative remedies must be exhausted as to the non-monetary claims, but

not as to the claims for money damages. *Miller v. Menghini*, — F.3d —, 2000 WL 639688 (10th Cir. 2000). The *Miller* panel adopted this rule with little real analysis, relying on *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997), which dealt not with a "mixed" claim but solely a claim for money damages, and on unpublished Tenth Circuit decisions which themselves contain only perfunctory treatment of the issue. *See Miller*, at *1, *citing Fever v. Booker*, 1999 WL 136922 (10th Cir. 1999) *and Florence v. Booker*, 1998 WL 694521 (10th Cir. 1998). Neither in *Miller* nor in any of the cases on which it relies is there any discussion — still less any analysis — of the reasoning of the other Courts of Appeals which have dealt with the issue of "mixed" claims.

Certainly, *Miller* does not present the long-standing, pervasive and reasoned disagreement among the circuits on which the petitioner stakes his claim to this Court's review. To the contrary, *Miller's* newness, its lack of any real analysis of the issue, and the isolated position in which it places the Tenth Circuit, all militate against review by the Court at this time.

CONCLUSION

The Court should deny the petition.

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